Supreme Court, U.S.
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No. 98-1055

In The

# Supreme Court of the United States

October Term, 1998

AMELIA EDWARDS,

*Petitioner,*

v.

STEVEN M. CLARKE,

*Respondent.*

**On Petition For A Writ Of Certiorari To The Rhode Island Supreme Court**

## RESPONDENT'S BRIEF IN OPPOSITION

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## COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Whether this Court should entertain this Petition, which is an original filing between these parties, in light of the constraints on the Court's original jurisdiction.

2. Whether the Rhode Island Supreme Court possesses the inherent power to impose sanctions on attorneys who use language which the court finds to be demeaning or insulting.

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## COUNTER-STATEMENT OF THE CASE

Respondent herein is an engineer licensed to practice in the State of Rhode Island who had been charged by the Rhode Island Ethics Commission with a violation of the Rhode Island Ethics Law. Although prior to the initial hearing in this matter, the Respondent had petitioned the Rhode Island Supreme Court for a Writ of Certiorari to dismiss the Ethics Commission complaint due to the fact that the Ethics Commission had violated the statutory time frames, the Rhode Island Supreme Court denied the Petition for Certiorari and the hearings proceeded. At the conclusion of the hearings, the Rhode Island Ethics Commission on July 26, 1996, issued a decision and order finding the Respondent, Steven M. Clarke, in violation of the Rhode Island Code of Ethics. Mr. Clarke then filed an appeal in the Providence County Superior Court which on February 10, 1998 reversed the decision of the Ethics Commission and found that the Ethics Commission failed to complete its investigation of Clarke within the statutory time limit provided in Rhode Island General Laws §36-14-12(c).

The Ethics Commission then sought review of the Superior Court ruling by filing a Petition for Certiorari in the Rhode Island Supreme Court challenging the Superior Court's construction of Rhode Island General Laws §36-14-12(c). On July 14, 1998, the Rhode Island Supreme Court issued an opinion in *Clarke v. Morsilli*, 714 A.2d 597 (R.I. 1998) wherein it affirmed the trial court's ruling and specifically held that the statute required the Ethics Commission to complete its investigation within one hundred eighty (180) days of filing the complaint. The Rhode

Island Supreme Court also determined that the Commission, in completing its investigation, had to make a finding as to whether probable cause existed within that same time frame. On July 20, 1998, Petitioner herein, Amelia Edwards, on behalf of the Rhode Island Ethics Commission, filed a Motion for Reargument and a Memorandum in Support of Reargument (contained in Appendix 3 to Petitioner's Petition for Writ of Certiorari to this Court). On July 23, 1998, Respondent, Steven M. Clarke, through his attorney, filed an objection to the Petitioner's Motion to Reargue. In that Petition, Respondent, Steven M. Clarke, requested that the Rhode Island Supreme Court award him his attorneys fees incurred in defending the Petition to Reargue filed by the Ethics Commission (see Appendix 2 to Petitioner's Petition for Certiorari, Page 25).

Thereafter, on September 24, 1998, the Rhode Island Supreme Court issued an Order denying the Ethics Commission's Petition for Reargument and at the same time imposed sanctions in the nature of legal fees against the two Ethics Commission attorneys who had filed the Petition to Reargue. The Court's Order required that Attorneys Amelia Edwards (Petitioner herein) and Katherine Tammelleo (not a Petitioner herein), pay to Respondent Steven M. Clarke, the sum of One Thousand Five Hundred Dollars ($1,500.00) as a sanction in the nature of counsel fees for responding to the Petition for Reargument filed by the Ethics Commission. Thereafter, Petitioner Amelia Edwards did not file any papers with the Rhode Island Supreme Court other than an *ex-parte* letter to the Court protesting the award of attorneys fees. This *ex-parte* letter was returned to Ms. Edwards by the Rhode

Island Supreme Court with the suggestions that she file a Petition with the Court for reconsideration of the sanction. Ms. Edwards did not file such a Petition.

## REASONS FOR DENYING THE PETITON

The Petitioner seeks a Writ of Certiorari on the basis that the award of attorney's fees and the sanction of the attorney violated the attorney's rights to freedom of expression and due process of law. Petitioner further seeks a Writ of Certiorari because the sanction was summarily imposed without prior notice, warning or opportunity to be heard. None of these grounds are substantiated in the record. For the reasons set forth in greater detail within, this Court should deny review.

### I.

### THIS COURT SHOULD NOT ENTERTAIN THIS PETITION WHICH IS AN ORIGINAL FILING BETWEEN THE PARTIES BECAUSE THIS COURT DOES NOT HAVE ORIGINAL JURISDICTION OVER THIS MATTER.

The Petition for Writ of Certiorari filed by Amelia Edwards is entitled *Amelia Edwards v. Steven Clarke*. There is no case or controversy between Amelia Edwards and Steven Clarke. Amelia Edwards was an attorney contractually employed by the Rhode Island Ethics Commission in the case of *Morsilli v. Clarke*. The case of *Morsilli v. Clarke* originated in the Rhode Island Superior Court and then proceeded thereafter to the Rhode Island Supreme Court. The outrageous Petition for Reargument, filed by

Attorney Amelia Edwards and Attorney Tammelleo, was filed in the matter of *Morsilli v. Clarke*. This Court does not have original jurisdiction of any controversy between Amelia Edwards and Steven Clarke. In fact, there is no case or controversy between the two. The caption of the case in this matter purports to deal with a case or controversy which does not even exist. This Court's original jurisdiction is limited by Article III of the United States Constitution and 28 U.S.C. §1251. The Petition filed by Amelia Edwards does not fit within any of the categories set forth in the constitutional or statutory empowerment of this Court's jurisdiction.

There is no case or controversy involving Ms. Edwards and Mr. Clarke which has ever been brought before any court for adjudication. A controversy must be one that is appropriate for judicial determination, must be definite and concrete concerning legal relations of the parties, and there must be a real and substantial controversy admitting of specific relief by a decree of conclusive character. *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617 (1937). Thus, the Court does not have jurisdiction to entertain this matter in the form presented.

## II.

## THE RHODE ISAND SUPREME COURT POSSESSES THE INHERENT POWER TO IMPOSE SANCTIONS ON ATTORNEYS WHO USE LANGUAGE WHICH THE COURT FINDS TO BE DEMEANING AND INSULTING.

It is axiomatic that Courts have the power to punish contempt by fine or imprisonment by attorneys or litigants before them. In fact, Rhode Island General Laws §8-6-1 empowers both the Rhode Island Supreme Court and Superior Court to punish "by fine or imprisonment or both" all contempts of their authority. The power of the Rhode Island Supreme Court to impose contempt sanctions by requiring a party to pay the opponent's attorney's fees was clearly set forth in the Rhode Island Supreme Court's decision of *Vincent v. Musone*, 574 A.2d 1234 (R.I. 1990). In *Vincent v. Musone*, the Rhode Island Supreme Court, in remanding a case to the Superior Court for a new trial, emphasized that the plaintiff shall be required to "pay the reasonable expenses incurred by the defendants in connection with first trial, including a reasonable counsel fee". *Id.* at 1235. The Court had awarded the counsel fee because it felt that justice would be served by an award of counsel fee to the defense counsel due to an undue delay by plaintiff's counsel seeking to amend his complaint. In *Vincent v. Musone*, plaintiff's counsel asked the court if the award of fees was to be considered as a sanction pursuant to Rule 11 of the Rhode Island Superior Court Rules of Civil Procedure. The Rhode Island Supreme Court answered that the Court was not awarding fees pursuant to Rule 11 but rather was exercising its "inherent power to fashion an

appropriate remedy that would serve the ends of justice in this controversy".

Also, in *E.M.B. Associates, Inc. v. Sugarman*, 118 R.I. 105 (R.I. 1977), the Rhode Island Supreme Court upheld an award of attorney's fees in a civil contempt proceeding by the trial court. The court there stated "the inherent power of courts to punish for contempt of their orders has long been recognized by their jurisprudence, citing *Ex-parte Robinson*, 86 U.S. (19 Wall) 505, 510, 22 L.Ed. 205, 207 (1873). The Rhode Island Supreme Court in *Sugarman* went on to state that "numerous cases support the position that it is within the discretion of the court finding contempt to award counsel fees in order to make an innocent party whole." *See Dow Chemical Company v. Chemical Cleaning, Inc.*, 434 F.2d 1212, 1215 (5th Cir. 1970).

Federal courts have also upheld the imposition of sanctions in cases such as this. The federal courts clearly stated that an attorney sanctioned under Rule 11 has no due process right to a hearing and instead can be sanctioned based upon the record alone. *Muthid v. Brant Point Nantucket, Inc.*, 838 F.2d 600 (1st Cir. 1988). In *Muthid*, the Court noted that the District Court imposed sanctions without a full prior hearing. The Court went on to state that Rule 11 does not require a hearing in this case. Quoting the Rules Advisory Committee's note to Rule 11, the Court pointed out that because one of the parties had filed a motion asking for Rule 11 sanctions, it gave the appellants adequate notice. "The briefing process allowed them and their counsel opportunity to present evidence in argument". *Id.* at 607. The Court finally held that "we see nothing improper about basing the sanction in this case on the record alone". *Id.* at 607. It is clear that if a

party expressly states in its brief that it is seeking sanctions, then the responding party has received adequate notice to satisfy the due process clause, *In Re Perry*, 918 F.2d 931 (Fed Cir. 1990). The court in *Perry* stated that an adversarial evidentiary hearing is not required. In *Perry*, a request for counsel fees was contained in papers filed with the court. The court held that such a request in the brief satisfied the notice requirements of due process, citing *Braley v. Campbell*, 832 F.2d 1504, 1515 (10th Cir. 1987); and *Mays v. Chicago Sun-Times*, 865 F.2d 134, 139 n.3 (7th Cir. 1989). Thus the Court ruled that *Perry*, having been on notice, cannot now complain about lack of due process.

The case law clearly indicates that the courts have inherent power to punish disrespectful or discourteous language. Amelia Edwards, the purported Petitioner in this case, has had ample opportunity to file a motion with the Rhode Island Supreme Court to object to the imposition of sanctions. Also, notice was provided to her in the Respondent's brief to the court, wherein he sought counsel fees.

## CONCLUSION

The Rhode Island Supreme Court correctly held that Respondent was entitled to counsel fees in this matter. Petitioner did not avail herself of the avenues of relief which were available to her by filing a Motion for Reconsideration of the Sanctions. Furthermore, there does not

exist a conflict among the Circuits or any other characteristics of this case which would support a grant of the Writ and the Petition should therefore be denied.

Respectfully submitted,

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